

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

June 21, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-1232

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

M & I FIRST NATIONAL BANK,
WEST BEND, WISCONSIN, as TRUSTEE,

Plaintiff-Respondent,

v.

EPISCOPAL HOMES MANAGEMENT, INC.,

Defendant-Respondent,

RICHARD V. WILKINSON and
NANCY V. WILKINSON,

Defendants-Appellants,

ELDERLY HOUSING AUTHORITY,
MARY D. PALMER, ROBERT T. ALLEN,
EARL M. BOULTON, CHARLOTTE S. BOULTON,
ELIZABETH A. BROWN, HOWARD G. BROWN,
JOSEPHINE DIETRICH, FLORENCE DIETRICH,
MARY ALICE HAMMOND, WILLIS R. HAMMOND,
GORDON B. HOFFMAN, JESSIE HOFFMAN,
ELEANOR G. JORGENSEN, ESTHER M. KLEMP,
ERNEST LIPMAN, SAMUEL LOOMIS,
MILDRED G. MACEK, BARBARA F. MUCKLER,
DOROTHY W. OSBORNE, IRVING W. ROANE,
ETHEL V. ROANE, ROBERT ROSENWALD,

LAURA ROSENWALD, MARION G. SANFORD,
RICHARD C. THOMPSON, JUNE H. THOMPSON,
MARION THORNBERRY, ELIZABETH WALKER,
HELEN M. WILSON, JAMES E. GRIFFISS
and ELIZABETH H. MILLER,

Defendants.

APPEAL from a judgment of the circuit court for Racine County:
DENNIS J. BARRY, Judge. *Reversed and cause remanded with directions.*

Before Brown, Nettesheim and Snyder, JJ.

NETTESHEIM, J. Richard V. and Nancy V. Wilkinson
appeal from a summary judgment dismissing their cross-claim against
Episcopal Homes Management, Inc. (EHM) and their counterclaim against M&I
First National Bank, West Bend, Wisconsin, in its capacity as a bond trustee.
The Wilkinsons sought the damages contemplated by § 100.20(5), STATS., based
upon their claim that EHM, as a landlord, failed to return their security deposit
or otherwise provide them with a written statement accounting for the amount
withheld pursuant to WIS. ADM. CODE § ATCP 134.06. The Wilkinsons named
M&I as a defendant because it held the security deposit pursuant to certain
financing agreements with EHM's predecessor, the Episcopal Diocese of
Milwaukee, Inc.

By a separate decision issued this same day in a related appeal,
M&I First Nat'l Bank v. Episcopal Homes Management, Inc., No. 94-1294,¹ we

¹ *M&I First Nat'l Bank v. Episcopal Homes Management, Inc.*, No. 94-1294, slip op.
(Wis. Ct. App. June 21, 1995).

have held that: (1) the residency agreements entered into between EHM and the residents, including the Wilkinsons, of a housing facility for the elderly known as Lake Oaks at DeKoven constituted rental agreements pursuant to WIS. ADM. CODE § ATCP 134.02(10); (2) the entrance fees paid by the residents pursuant to the residency agreements were security deposits within the meaning of § ATCP 134.02(11); and (3) the subordination provisions of the residency agreements did not defeat the residents' right to a refund of their entrance fees, less certain allowable deductions, upon termination of the agreement.

The Wilkinsons are the only residents participating in this appeal who have vacated the premises and terminated their residency agreement with EHM. Upon doing so, they requested EHM to refund their entrance fee. EHM failed to either refund the fee pursuant to WIS. ADM. CODE § ATCP 134.06(2) or to provide the written accounting required by § ATCP 134.06(4) within the requisite twenty-one days.

Based upon our decision in the related appeal, we conclude that the Wilkinsons are entitled to the damages contemplated by § 100.20(5), STATS. See also *Shands v. Castrovinci*, 115 Wis.2d 352, 340 N.W.2d 506 (1983). We therefore reverse the trial court's denial of the Wilkinsons' motion for summary judgment against EHM and M&I. We remand with directions to enter judgment for the Wilkinsons. The court is authorized to conduct a hearing on this question if necessary.

By the Court.—Judgment reversed and cause remanded with directions.

Not recommended for publication in the official reports.